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Opinion No. 12-49

Charter Schools – Student Enrollment Capacity

QUESTION

If a charter school moves into a building with a greater capacity for students than its previous building or expands an existing building, and as a result wants to enroll additional students, is the charter school bound to any capacity limit that may be set forth in its charter agreement?

OPINION

If a charter agreement restricts school capacity, a charter school will be bound by the restriction until this provision of the charter agreement is appropriately amended.

ANALYSIS

Tennessee permits the establishment of charter schools under the Tennessee Public Charters School Act of 2002 (“the Act”), codified at Tenn. Code Ann. §§ 49-13-101 to -137. The question presented asks what limits, if any, exist on the student capacity of a charter school once its application to operate is approved by the local board of education pursuant to Tenn. Code Ann. § 49-13-108. The Act does not expressly set a limit on the number of students who may attend any particular charter school. While an application for a charter school must contain certain information, including “a description of the anticipated student enrollment” under Tenn. Code Ann. § 49-13-107(b)(9), the application is not required to establish a maximum or minimum student capacity. *See* Tenn. Code Ann. §49-13-107 (identifying the items that must be included in an application seeking to form and operate a charter school). Nor must the charter agreement establish a maximum or minimum student capacity. *See* Tenn. Code Ann. § 49-13-110(a) (describing what is required for the charter agreement). Tenn. Code Ann. § 49-13-110 provides in pertinent part:

- (a) The approval by the chartering authority of a public charter school application shall be in the form of a written agreement signed by the sponsor and the chartering authority, which shall be binding upon the governing body of the public charter school. The charter agreement for a public charter school shall be in writing and contain all components of the application.

(b) The governing body of the charter school may amend the original charter by making petition to the chartering authority. Timelines for approval and the appeal process in § 49-13-108 shall apply to all petitions to amend the original charter....

If the charter agreement provides for a maximum or minimum student capacity for the charter school, then pursuant to Tenn. Code Ann. § 49-13-110 this provision would be binding on the charter school. The charter school would remain subject to this provision until the provision was removed or amended by the governing body of the charter school, which action must be approved by the chartering authority of the school pursuant to Tenn. Code Ann. § 49-13-110(b).

Section 49-13-113 of the Act does contemplate that there *may* exist some defined student capacity limitations on a charter school, presumably to be set forth in the school's charter agreement, stating in relevant part:

(b)(1) A charter school shall enroll an eligible pupil who submits a timely application, *unless the number of applications exceeds the capacity of a program, class, grade level or building.*

(2)(A) *If applications exceed the planned capacity of the public charter school,* the following preferences shall apply:

(i) Pupils in attendance in the previous school year at any public school that converts to become a public charter school;

(ii) Pupils attending public schools within the LEA [local education agency] in which the public charter school is located, if those pupils would otherwise be included in the area in which the public charter school will focus;

(iii) Children residing within the LEA service area in which the public charter school is located, but who are not enrolled in public schools, if those children would otherwise be included in the area in which the public charter school will focus; and

(iv) Children residing outside the LEA in which the public charter school is located and whose needs would be included in the area in which the public charter school will focus.

(B) *If enrollment within a group of preference set out in subdivision (b)(2)(A) exceeds the planned capacity of the school,* enrollment within that group shall be determined on the basis of a lottery. . . .

Tenn. Code Ann. §40-13-113(b) (emphasis added).

The provisions of Tenn. Code Ann. §40-13-113(b) must be read *in para material* with the other provisions of the Act to ascertain the entire Act's purpose and intent. *See Wells v.*

Tennessee Bd. of Regents, 231 S.W.3d 912, 917 (Tenn. 2007), *cert. denied*, 552 U.S. 1101 (2008). Furthermore, the provisions of this Act which relate to the same subject matter must be interpreted “so that they operate in harmony, not in conflict with each other.” *In re Akins*, 87 S.W.3d 488, 493 (Tenn. 2002). Finally these statutes must be read as written, without unduly restricting or expanding their intended scope. *Lazar v. J.W. Aluminum*, 346 S.W.3d 438, 442 (Tenn. 2011).

Applying these principles to the aforementioned provisions of the Act, Section 40-13-110(a) clearly states that a charter school is bound by the terms of its charter agreement. Thus, if that agreement contains a provision setting a minimum or maximum student capacity, the charter school must operate within the confines of that restriction. Tenn. Code Ann. § 40-13-113(b) does not dictate a different conclusion, since its primary purpose is to allocate preferences among student applications if enrollment exceeds the planned capacity of a program, class, grade level or building. Tenn. Code Ann. § 40-13-113(b) does not state that a charter school may avoid any restrictions existing in its charter agreement, and to read such language into this statute would not only unduly extend its intended scope but also would directly conflict with the requirement of Tenn. Code Ann. § 40-13-101(a) that a school must abide with the terms of its charter agreement.

Consequently, no conflict exists between Tenn. Code Ann. § 49-13-110 and Tenn. Code Ann. § 49-13-113 in regard to student enrollment. If a charter agreement restricts student capacity, a charter school will be bound by this restriction until this provision of the charter agreement is appropriately amended.

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